

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: March 21, 2017

<p>* * * * *</p> <p>JODY R. SMITH,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>SECRETARY OF HEALTH AND HUMAN SERVICES,</p> <p style="text-align: center;">Respondent.</p> <p>* * * * *</p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p>UNPUBLISHED OPINION</p> <p>No. 16-1282V</p> <p>Special Master Gowen</p> <p>Attorneys' Fees and Costs; Special Master's Discretion</p>
--	---	--

Nancy Routh Meyers, Ward Black Law, Greensboro, NC for petitioner.
Colleen Clemons Hartley, U.S. Department of Justice, Washington, DC for respondent.

DECISION AWARDING ATTORNEYS' FEES AND COSTS¹

On October 6, 2016, Jody R. Smith ("petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² [the "Vaccine Act" or "Program"]. Petitioner alleges that as a result of an influenza ("flu") vaccine administered on or about November 27, 2015, she suffered an exacerbation of chronic pain and myalgia. Stipulation (ECF No. 22), ¶¶ 2, 4. On March 9, 2017, the undersigned issued a decision awarding compensation to petitioner based on the parties' stipulation. ECF No. 23.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioners have 14 days to identify and move to delete medical or other information, that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, the undersigned agrees that the identified material fits within the requirements of that provision, he will delete such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

On March 13, 2017, petitioner filed a motion for attorneys' fees and costs. Petitioner's Motion ("Pet'r's Mot."), ECF No. 25. Petitioner requests attorneys' fees in the amount of \$16,059.00 and attorneys' costs in the amount of \$469.29, for a total amount of \$16,528.29. Id. at 1. Petitioner included her signed statement that she did not incur any fees or costs related to the prosecution of this case, in accordance with General Order #9. Pet'r's Mot., Exhibit A.

On March 13, 2017, respondent filed a response to petitioner's motion. ECF No. 26. Respondent states he is "satisfied the statutory requirements for an award of attorneys' fees and costs are met in this case." Id. at 2. He "respectfully recommends that the Special Master exercise his discretion and determine a reasonable award for attorneys' fees and costs." Id. at 3.

Under the Vaccine Act, the special master shall award reasonable attorneys' fees and costs for any petition that results in an award of compensation. 42 U.S.C. § 300aa-15(e)(1). In the present case, petitioners were awarded compensation pursuant to the terms of a joint stipulation. Therefore, petitioners are entitled to an award of reasonable attorneys' fees and costs.

The undersigned has reviewed counsel's time records and tasks performed, and finds them reasonable. Petitioner's counsel has also submitted receipts for his costs, which the undersigned has also reviewed and finds to be reasonable. Based on the reasonableness of petitioner's request and the lack of opposition from respondent, the undersigned **GRANTS** petitioner's motion for attorneys' fees and costs.

Accordingly, the undersigned awards a lump sum in the amount of \$16,528.29, representing reimbursement for attorneys' fees and costs, in the form of a check payable jointly to petitioner, Ms. Jody R. Smith, and her counsel, Nancy R. Meyers of Ward Black Law.³

In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of Court **SHALL ENTER JUDGMENT** in accordance with this decision.⁴

IT IS SO ORDERED.

s/Thomas L. Gowen

Thomas L. Gowen
Special Master

³ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs," and fees for legal services rendered. Furthermore, § 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. See generally Beck v. Sec'y of Health & Human Servs., 924 F.2d 1029 (Fed. Cir. 1991).

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice not to seek review.